

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
Kwanporn “Mai” Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com
ktulyathan@diversitylaw.com

William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ZACHARY THOMPSON, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

D & K ENGINEERING, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2022-00026832-CU-OE-CTL

[Assigned for all purposes to the Hon. Marcella O.
McLaughlin, Department C-72]

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFF’S MOTION TO
APPROVE SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Date: January 24, 2025
Time: 9:00 a.m.
Courtroom: C-72

Action Filed: July 8, 2022
Trial Date: None Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

I, Max W. Gavron, hereby declare and state as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of California and am a member of the law firm of the Diversity Law Group, P.C., one of the attorneys of record for Plaintiff Zachary Thompson (“Plaintiff”) in the above-entitled action. I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

PROCEDURAL HISTORY

2. From the inception of the case, Plaintiff's Counsel have zealously represented the interests of the Allegedly Aggrieved Employees.

3. On May 6, 2022, Plaintiff submitted written notice under Labor Code § 2699.3 to the LWDA and Defendant D & K Engineering (“Defendant”), alleging that Defendant violated Labor Code § 204 (the “PAGA Notice”). Attached hereto as **Exhibit A** is a true and correct copy of the PAGA Notice

4. As set forth in the PAGA Notice, Plaintiff contends that, as matter of policy and practice, Defendant failed to pay wages in a timely manner, in violation of Labor Code § 204.

5. On July 8, 2022, Plaintiff filed a representative PAGA action complaint against Defendant in the Superior Court of the State of California, County of San Diego (the “Action”). The Complaint alleges a single cause of action for violation of Labor Code § 2698, *et seq.*, based on the facts described in Plaintiff’s PAGA Notice. As alleged in the Complaint, Plaintiff contends that Defendant failed in its affirmative obligation to make timely payments of wages to employees according to the terms of Labor Code § 204(d). Specifically, Plaintiff alleges that Defendant, as a matter of policy and practice, paid the wages of employees beyond the time periods allowed pursuant to Labor Code § 204. Plaintiff seeks civil penalties under PAGA, as well as attorneys’ fees, and costs. Defendant disputes and denies Plaintiff’s allegations and claims asserted in the operative Complaint.

6. On or about October 14, 2022, Defendant filed a motion to compel arbitration of Plaintiff's individual PAGA claim and dismiss Plaintiff's non-individual PAGA claims. After

1 briefing and hearing, the Court denied Defendant’s motion on the grounds that the arbitration
2 agreement at issue is unenforceable due to a wholesale waiver of PAGA claims.

3 7. On or about February 14, 2023, Defendant appealed the Court’s denial of its
4 motion to compel arbitration. The Parties subsequently initiated mediation procedures in the
5 appellate court and engaged in mediation with Retired Justice Judith Haller on December 4,
6 2023.

7 8. Prior to the mediation, Defendant informally produced data relevant to the
8 potential value of the claims, including the number of alleged aggrieved employees and pay
9 periods encompassed by the allegations of Plaintiff’s complaint, information pertaining to
10 Defendant’s payroll policies and procedures, and evidence of the changes it made to its payroll
11 policies. Using the data provided by Defendant, I conducted a full penalties analysis as to the
12 value of the PAGA claims. I also investigated the applicable law as applied to the facts
13 discovered regarding Plaintiff’s alleged claims and potential defenses thereto. Thus, I entered the
14 settlement process with a clear understanding of Defendant’s maximum exposure.

15 9. The Parties ultimately agreed to a settlement of the Action, including dismissal of
16 the appeal, and executed a memorandum of understanding. The Parties thereafter worked to
17 memorialize the terms of the settlement in a long-form Settlement Agreement (“Agreement” or
18 “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached
19 herewith as **Exhibit B**.

20 **MONETARY TERMS OF SETTLEMENT**

21 10. As defined by the Settlement Agreement, the “Allegedly Aggrieved Employees”
22 means all individuals employed by D&K in a non-exempt position in the State of California who
23 received wages during the PAGA Period (“Allegedly Aggrieved Employees”). *See* Agreement ¶
24 I.C. The PAGA Period is the time period of May 6, 2021, through June 30, 2022. *Id.* ¶ I.N.
25 Based on Defendant’s records, there are approximately 245 Allegedly Aggrieved Employees. *Id.*
26 ¶ III.A.b. These individuals were issued approximately 4,395 wage statements during the PAGA
27 Period. *See id.*

28 11. The Settlement Agreement requires Defendant to pay the Gross Settlement

1 Amount of One Hundred Seventy-Five Thousand Dollars (\$175,000.00). *See* Agreement ¶ I.K.
2 Based on the Gross Settlement Amount, Defendant will pay approximately \$39.82 per pay
3 period to resolve the claims in this case.

4 12. The balance of the Gross Settlement Amount remaining after deduction of the
5 approved attorneys' fees and litigation costs, Settlement Administration Costs, and Plaintiff's
6 Service Payment will be available for distribution to the LWDA and Allegedly Aggrieved
7 Employees. *See* Agreement ¶¶ I.L, I.M. The net amount will total approximately \$87,166.66.

8 13. Seventy-five percent (75%) of the net amount, or approximately \$65,375.00, will
9 be paid to the LWDA for PAGA penalties ("LWDA Payment"). *See* Agreement ¶ I.L. The
10 remaining twenty-five percent (25%), or approximately \$21,791.67, will be distributed to the
11 Allegedly Aggrieved Employees ("Net Employee Fund"). *See* Agreement ¶ I.M.

12 14. As part of the settlement, Defendant does not object to Plaintiff's Counsel's
13 request for attorneys' fees ("Attorneys' Fees Award") of approximately one-third of the Gross
14 Settlement Amount, *i.e.*, Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-
15 Three Cents (\$58,333.33), and reimbursement for litigation costs ("Attorneys' Costs Award") in
16 an amount up to Fifteen Thousand Dollars (\$15,000.00), subject to the Court finally approving
17 this settlement. *See* Agreement ¶¶ V.A, V.B. Plaintiff's Counsel's anticipated actual litigation
18 costs total \$2,010.50. Any portion of the requested attorneys' fees and/or costs not approved by
19 the Court shall be added back to the Gross Settlement Amount for distribution according to the
20 terms of the Settlement Agreement. *See id.* ¶¶ V.A.a, V.B.b.

21 15. Also, as part of the settlement, Defendant does not object to Plaintiff's request for
22 a Service Payment to Plaintiff in an amount not to exceed Ten Thousand Dollars (\$10,000.00).
23 *See* Agreement ¶ V.E. Any portion of the Service Payment to Plaintiff that is not approved by the
24 Court shall be added back to the Gross Settlement Amount for distribution according to the terms
25 of the Settlement Agreement. *See id.* ¶ V.E.c.

26 16. Finally, the settlement provides for the payment of the fees and expenses
27 reasonably incurred by the Settlement Administrator. *See* Agreement ¶ VII.J. The Parties have
28 agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the

administration costs estimated to be Four Thousand Five Hundred Dollars (\$4,500.00). *See* Agreement ¶¶ I.W, VII.J.

PAYMENTS TO AGGRIEVED EMPLOYEES AND THE LWDA

17. Assuming that the Court approves the Service Payment to Plaintiff (\$10,000.00), attorney's fees (\$58,333.33), actual litigation costs (\$2,010.50) and Settlement Administration Costs (\$4,500.00), I estimate that the remainder of the Gross Settlement Amount will total \$100,156.17. Seventy-five percent (75%) of the net amount (approximately \$75,117.13) will be paid to the LWDA for PAGA penalties. The remaining twenty-five percent (25%) (approximately \$25,039.04) will be distributed to the Allegedly Aggrieved Employees. This is a greater distribution to the LWDA and aggrieved employees because of the difference between what the Parties allocated to counsel's costs and those actually incurred.

18. The individual Settlement Shares to each Allegedly Aggrieved Employee will be based on the total number of pay periods in which the employee worked during the PAGA Period. *See* Agreement ¶ VI.B.b. This is fair, as it directly allocates greater penalties to individuals who have allegedly suffered greater harm.

19. The amount any particular Allegedly Aggrieved Employee will be entitled to recover will be greater or lower than this average depending on the number of pay periods in which the employee worked during the PAGA Period, with some entitled to receive more, and others less.

20. If any checks from the Settlement remain uncashed after 180 days, the Settlement Administrator will send the funds to the California State Controller's Office Unclaimed Property Fund in the names of the applicable Allegedly Aggrieved Employees. *See* Agreement ¶ VI.B.c.

POTENTIAL CIVIL PENALTIES

21. I negotiated the settlement based on a clear understanding of the maximum exposure in this case. There are approximately 4,395 pay periods in which Plaintiff contends that Defendant paid the wages of Allegedly Aggrieved Employees beyond the time periods allowed under Labor Code § 204. Defendant represented that there were approximately 245 Allegedly Aggrieved Employees during the PAGA Period. Pursuant to Labor Code § 210, there is an initial

1 penalty of \$100 for the first violation and a \$200 penalty for each subsequent violation. Under
2 PAGA, based on underlying violation of Labor Code § 204, the statutory penalty is \$100 for any
3 initial violation and \$200 for each subsequent violation for each employee. Labor Code § 210.
4 Thus, based on the data provided to Plaintiff's Counsel prior to mediation, the estimated
5 potential penalties based on the numbers Defendant has provided to Plaintiff, the potential civil
6 penalties are approximately \$439,500.00 (4,395 pay periods x \$100 = \$439,500). While Labor
7 Code § 210 also provides for a portion of wages withheld to be allocated as a component of the
8 penalty, in my experience under the PAGA, courts are often hesitant to award that component of
9 the penalty – especially without a finding that there had been a prior known violation of the
10 Labor Code cited against the employer. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144
11 (9th Cir. 2021) (holding employer was not subject to heightened penalty under the PAGA
12 because it “was not notified by the Labor Commissioner or any court that it was subject to the
13 California Labor Code....”).

14 22. The maximum penalty calculation assumes that Plaintiff will prevail on the
15 merits. However, Plaintiff's claims are contested. Defendant, moreover, has argued that even if
16 the Court ultimately found the pay practice violative of Labor Code § 204, the alleged violation
17 is a technical one and the Court has discretion under PAGA to substantially reduce the PAGA
18 penalties or to decide not to award PAGA penalties at all. Defendant may have sought summary
19 judgment on this issue or proceeded to trial. Should Defendant have prevailed, the State of
20 California and Allegedly Aggrieved Employees would have been left with zero recovery.

21 23. In this case, , Defendant asserted that a substantial reduction in potential PAGA
22 penalties was warranted because (1) Defendant contends it followed the law (2) if the Court
23 determined it violated the law, the alleged violation was inadvertent, (3) the alleged violation
24 was a mere technicality, (4) Defendant changed its practices to eliminate the alleged violation
25 after receiving notice of the alleged violation, (5) the aggrieved employees did not suffer any
26 actual economic damages, and (6) PAGA penalties were completely unnecessary to punish or
27 deter Defendant's behavior.

28 24. I am also aware that Courts routinely award far less than the statutory maximum

1 amount of civil penalties, even where an underlying violation of the Labor Code is found. For
2 example, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the
3 plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA
4 penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30
5 Cal. App. 5th 504, 517 (2018). Similarly, in the matter of *Magadia v. Wal-Mart Assocs., Inc.*,
6 2019 U.S. Dist. Lexis 91792 (N.D. Cal. May 31, 2019), while the trial court imposed substantial
7 PAGA penalties upon the defendant, such amount still represented reductions of 67% and 80%
8 of the potential PAGA penalties at issue. *Id.* at *87-*100. Moreover, this was only after the
9 plaintiff in *Magadia* had prevailed after trial. Thereafter, the Ninth Circuit reversed a substantial
10 judgment in favor of the plaintiff and the aggrieved employees. *Magadia v. Wal-Mart Assocs.,*
11 *Inc.*, 999 F.3d 668, 682 (9th Cir. 2021). Thus, the maximum penalty calculation does not factor
12 in the likelihood that the Court would reduce the amount of penalties at trial.

13 25. I strongly believe that Plaintiff can prevail at trial. However, after taking into
14 account sharply disputed factual and legal issues involved in this litigation, the risks attending
15 further prosecution, and the substantial benefits to be received pursuant to the compromise and
16 settlement of the litigation, I have concluded that settlement on the terms set forth in the
17 Settlement Agreement is appropriate and in the best interests of Plaintiff and the Allegedly
18 Aggrieved Employees. Here, the Gross Settlement Amount is approximately 39.8% of the total
19 estimated exposure (\$175,000 Gross Settlement Amount ÷ \$439,500 maximum penalties). This
20 settlement is fair and reasonable, considering the attendant risks.

21 **ATTORNEY EXPERIENCE**

22 26. Plaintiff's Counsel have a great deal of experience in wage and hour class action
23 litigation and has been approved as class counsel in a number of class actions.

24 27. My qualifications are as follows: I received a full-tuition scholarship, and
25 graduated from Southwestern Law School in 2013, magna cum laude. I was in the top 5% of my
26 class. During my time at Southwestern, I was a Notes and Comments Editor on the Southwestern
27 Law Review. I also received awards for achieving the highest grade in my class in several
28 courses. In 2012, I was a full-time extern, at the United States District Court for the Central

1 District. Immediately after law school, I taught several courses at Southwestern, including
2 Principles of Legal Analysis and Legal Methods. I taught those courses for approximately four
3 years.

4 28. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately
5 September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted
6 in a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute.
7 I also regularly litigated cases across the civil litigation spectrum, including employment matters.

8 29. From February 2016, through Fall 2017, I practiced at the international law firm
9 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50
10 companies in Multi-District Litigation primarily in the product liability sphere. I also
11 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary
12 judgment decision regarding trade secret issues, in addition to working in several other practice
13 groups. *See Experian Info. Solutions v. Nationwide Marketing Servs. Inc.*, 893 F.3d 1176 (9th
14 Cir. 2018).

15 30. From September 2017, through September 2018, I served as a law clerk to a
16 Judge sitting on the United States District Court, Central District of California. I regularly
17 prepared bench memoranda, on cases involving all types of civil litigation, including regularly
18 working on wage and hour class actions.

19 31. I am currently an attorney at the law firm Diversity Law Group, P.C., an
20 employment law firm that has handled numerous wage and hour class and individual actions, on
21 both plaintiff and defense sides. My current practice focuses on employment matters involving
22 both class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior
23 Courts, the Orange County Superior Courts, the San Diego County Superior Courts, and the
24 United States District Courts for the Central, Northern, and Eastern Districts of California. I am
25 currently handling, or have handled, numerous wage and hour class action lawsuits with the firm,
26 including, but not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-
27 001906, Stanislaus County Superior Court); *Heredia v. Eddie Bauer LLC* (Case No.
28 16CV300475, United States District Court, Northern District of California); *Parsons v. Estenson*

1 *Logistics, LLC* (Case No. 34-2019-00252929, Sacramento County Superior Court); *Wood v.*
2 *Reeve Trucking Co., Inc.* (Case No. STK-CV-UOE-2018-0004414, San Joaquin County Superior
3 Court); *Coronel v. Pinnacle Agriculture* (Case No. 18CV004287, Monterey County Superior
4 Court), and *Tice v. Trader Joe's Company* (Case No. 20CV00892, Santa Barbara County
5 Superior Court), *Hyde v. Prime Now LLC*, Alameda County Superior Court Case No.
6 RG20068286, among others.

7 32. I have been certified as class counsel in a number of cases, including *Smith v.*
8 *Gold Country Health Center, Inc.* (Case No. PC20180491, El Dorado County Superior Court)
9 and *Pantoja v. RAMCO Enterprises, L.P.* (Case No. M126835, Monterey County Superior
10 Court). I have also assisted in numerous wage and hour class action mediations.

11 33. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of
12 Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28,
13 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our
14 clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019). The related case
15 decision was *Chavez v. Converse, Inc.*, 772 Fed. Appx. 571 (June 28, 2019).

16 34. To date, I have incurred approximately 73.1 hours in connection with the
17 litigation of this lawsuit. I also anticipate spending approximately 5 hours after approval
18 responding to correspondence and phone calls from Aggrieved Employees, the Settlement
19 Administrator, and Defendants' Counsel. Attached hereto as **Exhibit C** is a summary of the
20 hours I have incurred to date.

21 35. The total lodestar for my hours will be approximately \$50,765.00 based on an
22 hourly rate of \$650.00 per hour 73.1 hours + 5 anticipated hours) x \$650]. In January 2024, I
23 increased my hourly rate to \$650 per hour. I was approved at this rate in *Jaramillo v. USS-UPI,*
24 *LLC*, Contra Costa County Case No. C22-00641 (April 24, 2024), *Conner v Red Wing Brands of*
25 *America, Inc.*, San Mateo County Case No. 22CIV03830 (August 12, 2024), and *Buford, et al. v.*
26 *Estenson Logistics, LLC, et al.*, San Bernardino County Case No. CIVSB2133332 (October 23, 2024).
27 Prior to that, I have been approved at \$600.00 per hour in *Weybrew v. BEI Construction*, Solano
28 County Superior Court Case No. FCS055658 (January 14, 2022), *In re See's Candies Wage and*

1 *Hour Cases*, Case No. JCCP5004 (March 30, 2022), *Pevey v. Lumber City Corp*, San Bernardino
2 County Superior Court Case No. CIVDS2010240 (May 2, 2022), *Anguiano v. Mann Packing*
3 *Co., Inc.*, Monterey County Superior Court Case No. 19CV001178, and *Schneider v. Amazon*
4 *Retail LLC*, Los Angeles County Superior Court Case No. 21STCV26226 (December 1, 2022),
5 *Hyde v. Prime Now LLC*, Alameda County Superior Court Case No. RG20068286 (August 11,
6 2023), among others. Prior to that throughout 2020 and 2021, I was approved at an hourly rate
7 of at \$550.00 per hour in *James v RADC Enterprises, Inc.*, San Bernardino County Superior
8 Court, Case No. CIV-DS1933035 (September 29, 2020), *Hector Luna v. Triple Canopy, Inc.*,
9 Santa Clara County Superior Court, Case No. 19CV345169 (October 22, 2020), *Melbert*
10 *Magpugay v. Harbor Electronics, Inc.*, Santa Clara County Superior Court Case No.
11 19CV352547 (January 27, 2021), *Foster v. Schindler Elevator Corp.*, Alameda County Superior
12 Court Case no. RG19029640 (March 2, 2021), *Martin v. Streetplus Company, LLC, et al*, Los
13 Angeles Superior Court Case No. 19STCV15522 (July 13, 2021), *Morris v. Blue Mountain*
14 *Enterprises, LLC*, Solano County Superior Court, Case No. FCS05.858 (August 4, 2021).

15 36. Based on the hours and applicable rates of myself and my co-counsel, the lodestar
16 amount through the finalization of this settlement – without a multiplier – will be approximately
17 \$65,470.00. The lodestar is in excess of the \$58,333.33 fee request and results in a negative
18 multiplier of 0.89.

19 **LITIGATION COSTS**

20 37. At the time the Parties negotiated the Settlement Agreement, I did not have a final
21 tally of the litigation costs incurred to date. As such, the Parties included a maximum amount
22 that could be attributed to costs under the settlement. To date, Diversity Law Group has incurred
23 costs in the amount of \$2,010.50 for litigation-related expenses, including filing fees, service of
24 process fees, postage, and other costs. Attached hereto as **Exhibit D** is a true and correct copy of
25 my firm's cost report.

26 **NOTICE TO LWDA**

27 38. Concurrent with the filing of the Motion to Approve PAGA Settlement, my office
28 uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's website.

1 Attached hereto as **Exhibit E** is a true and correct copy of proof of submission of the settlement
2 documents to the LWDA's website. In addition, my office shall submit to the LWDA a copy of
3 the Court's judgment and order approving the Settlement Agreement within ten (10) days after
4 entry of judgment or order.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.

7 Executed on this 30th day of December 2024, at Los Angeles, California.

8 
9 _____
Max W. Gavron

EXHIBIT A

ZACHARY THOMPSON

c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA STREET, SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

May 6, 2022

VIA ON-LINE FILING WITH LWDA AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED TO EMPLOYER

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov

Re: Thompson v. D & K Engineering

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of the claims asserted on behalf of myself and all similarly situated aggrieved employees against my employer, D & K Engineering (the "Company"). I allege that the Company:

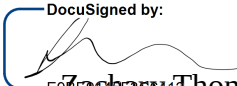
1. Violated Labor Code § 204 by failing to pay all similarly situated employees, including myself, their earned wages in a timely manner. For example, for the pay period of April 4, 2022 through April 17, 2022, the wages earned during such pay period were not paid until April 26, 2022, which is more than 7 days after the end of the pay period.

The address for the Company is as follows:

D & K Engineering
15890 Bernardo Center Dr.
San Diego, CA 92127

As part of this Notice, I also demand that the Company cure all violations and pay all applicable penalties. Please contact my attorney Larry W. Lee at the above address/phone number if you have any questions regarding this matter.

Sincerely,

DocuSigned by:

Zachary Thompson

cc: D & K Engineering (via certified mail)

EXHIBIT B

SETTLEMENT AGREEMENT

This Agreement is made by and between Zachary Thompson, individually and on behalf of the Allegedly Aggrieved Employees he seeks to represent, on the one hand, and D & K Engineering, on the other hand, subject to both the terms and conditions hereof and the approval of the Court.

I. Definitions.

A. “Action” means the Complaint filed in the lawsuit filed by Plaintiff Zachary Thompson on July 8, 2022, entitled *Zachary Thompson, as an individual and on behalf of all others similarly situated v. D & K Engineering, a California corporation; and Does 1 through 50, inclusive*, Superior Court of California, County of San Diego, case number 37-2022-00026832-CU-OE-CTL.

B. “Agreement” means this document and **Exhibit A** hereto. **Exhibit A** is expressly incorporated into this document by reference as though fully set forth herein.

C. “Allegedly Aggrieved Employees” means all individuals employed by D&K in a non-exempt position in the State of California who received wages during the PAGA Period.

D. “Approval” means the date on which the Court approves the Settlement and judgment is entered by the Court.

E. “Approval Order” means an order issued by the Court approving this Agreement as binding upon the Parties.

F. “Attorneys’ Costs Award” means the reimbursement of costs authorized by the Court to be paid to Plaintiff’s Counsel in connection with services rendered representing Plaintiff and the Allegedly Aggrieved Employees in the Action. Defendant shall not oppose an Attorneys’ Costs Award of up to Fifteen Thousand Dollars (\$15,000.00).

G. “Attorneys’ Fee Award” means an award of attorneys’ fees authorized by the Court to be paid to Plaintiff’s Counsel for the services rendered representing Plaintiff and the Allegedly Aggrieved Employees in the Action. In no event shall the Attorneys’ Fee Award exceed one-third of the Gross Settlement Amount or Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$58,333.33).

H. “Court” means the Superior Court of the State of California, County of San Diego, where the Action is pending.

I. “Defendant” or “D&K” means D & K Engineering.

J. “Defendant’s Counsel” means the law firm of Pettit Kohn Ingrassia Lutz & Dolin PC, counsel for Defendant in the Action.

K. “Gross Settlement Amount” means the total amount to be paid by Defendant not to exceed One Hundred Seventy-Five Thousand Dollars (\$175,000.00) which will be apportioned into the following amounts as set forth herein: (1) Settlement Administration Costs (not to exceed \$4,500.00) to be paid to the Settlement Administrator; (2) a Service Payment (not to exceed \$10,000.00) to be paid to Plaintiff; (3) an Attorneys’ Fee Award (not to exceed \$58,333.33) to be paid to Plaintiff’s Counsel; (4) an Attorneys’ Costs Award (not to exceed \$15,000.00) to be paid to Plaintiff’s Counsel; (5) the Net Employee Fund to be distributed for the benefit of the Allegedly Aggrieved Employees; and (6) the LWDA Payment.

L. “LWDA Payment” means seventy-five percent (75%) of the Gross Settlement Amount remaining after subtracting the Attorneys’ Fee Award, Attorneys’ Costs Award, Settlement Administration Costs, and Service Payment, to be paid by the Settlement Administrator to the California Labor and Workforce Development Agency (“LWDA”) from the Gross Settlement Amount within fifteen (15) business days after Defendant makes the Gross Settlement Amount payment consistent with the terms of this Agreement.

M. “Net Employee Fund” means the net of the Gross Settlement Amount less (1) any Attorneys’ Fee Award, (2) any Attorneys’ Costs Award, (3) any Settlement Administration Costs, (4) LWDA Payment, and (5) any Service Payment.

N. “PAGA Period” means the time period of May 6, 2021, through June 30, 2022.

O. “PAGA Representative Service Payment” or “Service Payment” means an award authorized by the Court to be paid to Plaintiff in recognition of his efforts in prosecuting the Action and obtaining the settlement in a representative capacity, as well as in exchange for a general release of all claims and waiver of the protections of Civil Code section 1542. In no event shall any Service Payment to Plaintiff exceed Ten Thousand Dollars (\$10,000.00).

P. “Parties” means Plaintiff and Defendant.

Q. “Plaintiff” means the plaintiff in the Action, Zachary Thompson.

R. “Plaintiff’s Counsel” means the law firms of Diversity Law Group and Polaris Law Group, counsel for Plaintiff.

S. “Released Claims” means all claims, causes of action, demands, damages, or liabilities arising at any time during the PAGA Period that were pled or which could have reasonably been pled based on the factual allegations contained in the operative Complaint or any amendments thereto, including but not limited to claims brought under the Private Attorneys General Act (“PAGA”) for violation of Labor Code Section 204.

T. “Released Parties” means D & K Engineering, including its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.

U. “Settlement” means the terms and conditions set forth in this Agreement.

V. “Settlement Administration Costs” means the actual and direct costs reasonably charged by the Settlement Administrator in an amount not to exceed Four Thousand Five Hundred Dollars (\$4,500.00) for its services in administering and distributing the Gross Settlement Amount.

W. “Settlement Administrator” means the settlement administrator appointed to administer this Settlement pursuant to the Agreement, Phoenix Settlement Administrators.

X. “Settlement Share” means the portion of the Net Employee Fund allocable to each Allegedly Aggrieved Employee Member as provided by this Agreement.

II. Recitals.

A. On May 6, 2022, Plaintiff, an employee of Defendant, sent a letter to the LWDA alleging Defendant violated California Labor Code section 204, pursuant to PAGA. On July 8, 2022, Plaintiff filed this Action against Defendant on a representative basis under PAGA, asserting violation of PAGA with respect to the payment of wages.

B. On August 19, 2022, Defendant filed an answer to Plaintiff’s Complaint, denying the material allegations and asserting various affirmative defenses.

C. On October 14, 2022, Defendant filed a motion to compel arbitration of Plaintiff’s individual PAGA claim and dismiss Plaintiff’s representative PAGA claims. On January 27, 2023, the Court denied Defendant’s motion to compel arbitration. On February 14, 2023, Defendant appealed the Court’s decision to the Court of Appeal, Fourth Appellate District.

D. On December 4, 2023, the Parties were scheduled to participate in mediation of the appellate action with Retired Justice Judith Haller. The Parties exchanged informal discovery, including Defendant’s production of information regarding the number of impacted pay periods, and engaged in extensive arm’s length negotiations, ultimately reaching a settlement prior to engaging in a formal mediation with Justice Haller.

E. Plaintiff has claimed, and continues to claim, that the contentions he has made in the Action have merit. Nothing in this Agreement may be construed as, or may be used as, an admission by Plaintiff that any of his claims are without merit.

F. Defendant expressly denies any liability. Defendant denies all claims, contentions, and each and every allegation made by Plaintiff in the Action. Nothing in this Agreement may constitute, may be construed as, or may be used as an admission by Defendant of any fault, wrongdoing, or liability whatsoever. Further, nothing in this Agreement shall constitute an admission of the accuracy of any allegation made by Plaintiff or Plaintiff’s Counsel.

G. Plaintiff’s Counsel and Defendant’s Counsel have conducted sufficient investigation and research to reach this Agreement.

H. Plaintiff's Counsel have investigated and evaluated the applicable law and facts regarding the claims presented in the Action and the potential defenses thereto. Plaintiff's Counsel have discussed and assessed the relative strength of the fundamental premises underlying the Action and have concluded that this Settlement is fair and adequate under the circumstances.

I. Plaintiff therefore deems it desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth herein.

J. Plaintiff, on his own behalf and as a representative of the Allegedly Aggrieved Employees, further acknowledges and agrees that Defendant disputes the merits of the claims against it.

K. Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of Defendant's time, energy, and resources have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Action.

NOW THEREFORE, it is agreed by and between the undersigned that the Action be settled and compromised as among Plaintiff (on behalf of himself and the Allegedly Aggrieved Employees) and Defendant, conditioned upon approval of the Court, on the following terms and conditions.

III. Consideration from Defendant.

A. Gross Settlement Amount. In full, complete, and final settlement and satisfaction of the Action as against Defendant and the Released Parties, and all Released Claims, and subject to all of the terms, conditions, and provisions of this Agreement, including Court Approval, Defendant agrees to provide the following consideration:

- a. The Parties acknowledge and agree Defendant shall pay a total of One Hundred Seventy-Five Thousand Dollars (\$175,000.00) in consideration of the Released Claims asserted in the Action.
- b. Allegedly Aggrieved Employees. Defendant represents that there are approximately Two-Hundred and Forty-Five (245) employees employed by D & K Engineering during the PAGA Period who were issued approximately four thousand three hundred ninety-five (4,395) wage statements during the PAGA Period.
- c. Escalator. Should the actual number of wage statements issued to the Allegedly Aggrieved Employees during the PAGA Period exceed 4,395, the Gross Settlement Amount will increase in the same proportion. For example, should the actual number of wage statements be two percent

(2%) greater than 4,395, the Gross Settlement Amount will increase by two percent (2%).

- d. Within twenty-one (21) calendar days after the Court issues the Approval Order, Defendant shall fund the Gross Settlement Amount.
- e. In the event the Settlement is cancelled pursuant to this Agreement, the Court denies Approval, or an appeal leaves the Settlement unenforceable, the Parties shall be returned to the same positions as existed at the time of this Agreement and all funds in the Gross Settlement Amount provided for in this paragraph shall be returned to Defendant, with the exception of amounts paid or owing to the Settlement Administrator for Administration Costs actually incurred for services already performed, which shall be paid by Defendant if still owed.

IV. Court Approval.

A. Motion for Court Approval of Settlement. Counsel for the Parties shall jointly request a hearing before the Court to be held on the earliest practicable date to seek Approval of the Settlement. In conjunction with such hearing, Plaintiff's Counsel shall submit this Agreement, together with Exhibit A hereto, a Motion for Court Approval of Settlement, and any other documents necessary to implement the Settlement. Plaintiff's Counsel will draft the Motion for Court Approval of Settlement, will make it available to Defendant at least five (5) business days prior to the filing of the motion, and will work with Defendant in good faith to make the motion acceptable to Defendant.

B. The Parties agree there is no statutory right to provide Allegedly Aggrieved Employees the option to opt out of the Settlement.

C. Submission to LWDA. Within ten (10) calendar days after the Court's entry of the Approval Order, Plaintiff's Counsel will submit a copy of the Court's Approval Order to the LWDA pursuant to California Labor Code section 2699(1)(3).

D. The Court shall retain jurisdiction to enforce the terms of this Agreement and the Approval Order, and this Agreement shall be admissible to prove the Settlement and the Allegedly Aggrieved Employees' release of the Released Claims against the Released Parties.

V. Fee, Expense, and Service Payments.

A. Attorneys' Costs Award. As a part of the Motion for Court Approval of Settlement, Plaintiff's Counsel intends to request that the Court award them an Attorneys' Costs Award but agree that the requested Attorneys' Cost Award shall not exceed Fifteen Thousand Dollars (\$15,000.00). The Attorneys' Costs Award shall be for all claims for costs and expenses, past, present, and future incurred in the Action (exclusive of any request for an Attorneys' Fee Award as set forth in this Agreement). Defendant shall not object and will affirmatively express Defendant's non-opposition to Plaintiff's Counsel's request for an Attorneys' Costs Award

provided Plaintiff's Counsel's request for an Attorneys' Costs Award shall not exceed Fifteen Thousand Dollars (\$15,000.00). The Settlement Administrator shall pay the Attorneys' Costs Award from the Gross Settlement Amount to Plaintiff's Counsel within fifteen (15) calendar days after Defendant funds the Gross Settlement Amount.

- a. If the Court awards Plaintiff's Counsel less than Fifteen Thousand Dollars (\$15,000.00) for the Attorneys' Costs Award, the remainder will be added back to the Gross Settlement Amount to be distributed according to the terms of this Agreement.

B. Attorneys' Fee Award. As part of the Motion for Court Approval of Settlement, Plaintiff's Counsel intends to request that the Court award them an Attorneys' Fee Award but agree that the requested Attorneys' Fee Award shall not exceed one-third of the Gross Settlement Amount, or Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$58,333.33). Plaintiff's Counsel shall not be permitted to petition the Court against Defendant for any additional payments for fees from Defendant unless the Escalator Clause in III.A.c. is activated, provided, however, that under no circumstance may Plaintiff's Counsel seek an Attorneys' Fee Award in excess of one-third of any increased Gross Settlement Amount resulting from the Escalator Clause. The Attorneys' Fee Award shall be for all claims for attorneys' fees, past, present, and future incurred in the Action (exclusive of any request for an Attorneys' Costs Award as set forth in this Agreement). Defendant shall not object and will affirmatively express Defendant's non-opposition to Plaintiff's Counsel's request for an Attorneys' Fee Award provided Plaintiff's Counsel's request for an Attorneys' Fee Award shall not exceed Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$58,333.33), *i.e.*, one-third of the Gross Settlement Amount. The Settlement Administrator shall pay the Attorneys' Fee Award from the Gross Settlement Amount to Plaintiff's Counsel within fifteen (15) calendar days after Defendant funds the Gross Settlement Amount.

- a. If the Court awards Plaintiff's Counsel less than one-third of the Gross Settlement Amount for the Attorneys' Fee Award, then Defendant shall have no obligation to pay Plaintiff's Counsel any additional amount for attorneys' fees.
- b. If the Court awards less than one-third of the Gross Settlement Amount for the Attorneys' Fee Award, the remainder will be added back to the Gross Settlement Amount to be distributed according to the terms of the Agreement.

C. Payment of any Attorneys' Fee Award and Attorneys' Costs Award to Plaintiff's Counsel from the Gross Settlement Amount shall constitute full satisfaction by Defendant of any obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, expenses, or costs in the Action incurred by any attorney on behalf of Plaintiff and/or the Allegedly Aggrieved Employees, and shall relieve Defendant and Defendant's Counsel of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of the Plaintiff and/or Allegedly Aggrieved Employees.

D. Defendant's own legal fees, costs, and expenses incurred in the Action shall be borne by Defendant.

E. Service Payment. As part of the Motion for Court Approval of Settlement, Plaintiff's Counsel intends to request that the Court approve a Service Payment for Plaintiff in an amount not to exceed a total of Ten Thousand Dollars (\$10,000.00) for his time in initiating and pursuing the Action against Defendant and for serving as the representative of the Allegedly Aggrieved Employees. Defendant will not object and will affirmatively express Defendant's non-opposition to Plaintiff's Counsel's request, provided that the Service Payment payable to Plaintiff does not exceed Ten Thousand Dollars (\$10,000.00).

- a. Any Service Payment approved by the Court shall be paid by the Class Administrator out of the Gross Settlement Amount to Plaintiff within fifteen (15) calendar days after Defendant funds the Gross Settlement Amount. Any Service Payment paid to Plaintiff shall be reported on an IRS Form 1099 (*i.e.*, as "Other Income") and the Settlement Administrator shall issue an IRS Form 1099-MISC to Plaintiff for such amount. Plaintiff agrees that he alone is responsible for the tax consequences, including any penalties and interest, relating to the payment of any Service Payment.
- b. If the Court awards less than Ten Thousand Dollars (\$10,000.00) as a Service Payment, Defendant shall have no further obligation to pay any amount to Plaintiff relating to the Action apart from his individual Settlement Share from the Gross Settlement Amount.
- c. If the Court awards less than Ten Thousand Dollars (\$10,000.00) as a Service Payment, the remainder will be added back to the Gross Settlement Amount to be distributed according to the terms of the Agreement.

F. Neither the denial of, an appeal of, a modification of, nor a reversal on appeal of any Attorneys' Fee Award, Attorneys' Costs Award, Service Payment, or Settlement Shares (as defined in Section I(W)) shall constitute grounds for cancellation or termination of this Agreement.

VI. Settlement Administration.

A. Settlement Notice. The Parties, subject to Court Approval, agree to the following procedures for giving notice of this Settlement to the Allegedly Aggrieved Employees:

- a. Within twenty-one (21) calendar days of Approval or on such date otherwise ordered by the Court, Defendant shall use commercially reasonable efforts to provide to the Settlement Administrator an electronic list that includes the following information for each Allegedly Aggrieved Employee: their first and last name, last known mailing address, Social

Security Number, and the total number of wage statements issued during the PAGA Period. The Settlement Administrator shall not share this information with anyone, including but not limited to Plaintiff and Plaintiff's Counsel. After delivery of the information set forth in this Paragraph to the Settlement Administrator, the Settlement Administrator shall obtain updates, if any, to the last known mailing addresses using information reasonably available from the National Change of Address database maintained by the United States Postal Service and such additional efforts as the Settlement Administrator reasonably believes are appropriate to identify updated mailing addresses, if any.

- b. The Settlement Administrator shall send a copy of the notice explaining the Settlement (**Exhibit A**) ("Settlement Notice") and the Allegedly Aggrieved Employee's Settlement Share to all persons shown by Defendant's records to be Allegedly Aggrieved Employees, via First Class U.S. Mail, no later than fifteen (15) calendar days following receipt of the information described in paragraph VI(A)(a) of this Agreement.
- c. The Settlement Administrator shall perform a single skip trace using an industry accepted source such as Accurant and using information identifying the Allegedly Aggrieved Employee, as necessary, to conduct an address update on any Settlement Notice described in section VI(A)(b) returned as undeliverable to the Settlement Administrator. The Settlement Administrator shall re-mail all Settlement Notices to new addresses identified by Skip Tracing within three (3) business days of obtaining such new addresses.
- d. Any Settlement Notices returned to the Settlement Administrator as undelivered and bearing a forwarding address shall be re-mailed by the Settlement Administrator within three (3) business days following receipt of the returned mail.
- e. The Settlement Administrator shall keep Defendant's Counsel and Plaintiff's Counsel apprised of the status of distribution of the Settlement Notice and Settlement Shares to the Allegedly Aggrieved Employees.

B. Net Employee Fund and Settlement Shares. The Settlement Administrator shall have sole authority for determining the Net Employee Fund and Settlement Share to each Allegedly Aggrieved Employee.

- a. For purposes of calculating the Net Employee Fund, the Settlement Administrator shall deduct the actual Settlement Administration Costs, the actual Service Payment, if any, the actual Attorneys' Fee Award, if any, the actual Attorneys' Costs Award, if any, and the LWDA Payment from the Gross Settlement Amount.

- b. The Settlement Share to each Allegedly Aggrieved Employee shall be determined by the Settlement Administrator dividing the Net Employee Fund by the total number of pay periods worked by the Allegedly Aggrieved Employees during the PAGA Period, and then multiplying that amount by the total number of pay periods attributed to that Allegedly Aggrieved Employee.
 - c. Any check issued to any Allegedly Aggrieved Employee shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of its issuance. Upon the expiration of the one hundred eighty (180) calendar day deadline, the funds from each uncashed check shall be forwarded to the State of California Controller's Office's Unclaimed Property Fund in the name of the Allegedly Aggrieved Employee who did not cash his/her respective Settlement Share check.
- C. The Settlement Administrator shall be responsible for at least the following:
 - a. Receiving, tracking, and organizing the Allegedly Aggrieved Employee information provided by Defendant;
 - b. Following up with Defendant with any questions about the Allegedly Aggrieved Employee information provided;
 - c. Printing and mailing to the Allegedly Aggrieved Employees the Settlement Notice approved by the Court;
 - d. Performing address updates and verifications prior to the first mailing of the Settlement Notice;
 - e. Performing at least a single Skip Trace address follow up on any returned mail;
 - f. Resolving any issues that may arise concerning whether an individual is an Allegedly Aggrieved Employee and/or the number of pay periods at issue with regard to each Allegedly Aggrieved Employee;
 - g. Consulting with counsel for the Parties concerning any relevant issue, including (without limitation) distribution of the Settlement Notice and payment of Settlement Shares;
 - h. Calculating the LWDA Payment, Net Employee Fund, and Settlement Shares, consistent with the terms of this Agreement and any order of the Court;
 - i. Distributing, by mail or otherwise, and paying Settlement Shares, and the LWDA Payment, any Attorneys' Fee Award, any Attorneys' Costs

Award, any Service Payment, and Settlement Administration Costs as may be ordered by the Court or as otherwise required by this Agreement;

- j. All tasks assigned to the Settlement Administrator under this Agreement, which, if not completed properly or accurately, shall subject the Settlement Administrator to liability for any costs, fines, losses, or expenses or other amounts incurred by the Parties; and
- k. Such other tasks as counsel for the Parties agree or the Court orders the Settlement Administrator to perform.

D. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

E. The Settlement Administrator is not an agent of Plaintiff, Plaintiff's Counsel, Defendant, or Defendant's Counsel.

F. The Settlement Administrator is not authorized by this Agreement or otherwise to act on behalf of Plaintiff, Plaintiff's Counsel, Defendant, or Defendant's Counsel except as set forth herein.

G. If an Allegedly Aggrieved Employee requests that the Settlement Administrator and/or its agent or employee refer him/her to Plaintiff's Counsel, or if an Allegedly Aggrieved Employee requests advice beyond merely ministerial information regarding the Settlement Notice or other Settlement-related documents for which the Settlement Administrator does not have an approved response, then the Settlement Administrator and/or its agent or employee shall promptly refer the inquiry to Plaintiff's Counsel and Defendant's Counsel.

H. The Parties agree to cooperate in the Settlement administration process and to use commercially reasonable efforts to carry out the terms of this Settlement and to control and minimize the costs and expenses incurred in the administration and implementation of the Settlement.

I. Within thirty (30) calendar days after the 180-day expiration period for the Settlement Shares, the Settlement Administrator shall provide counsel for all Parties with a written report listing the total amount of the Net Employee Fund paid; the number of checks issued to the Allegedly Aggrieved Employees; the number and total dollar amount of such checks that were negotiated and cashed; the number and total dollar amount of checks issued that were not negotiated and cashed, if any; the amount of the LWDA Payment paid to the LWDA; the amount of Settlement Administration Costs; and the amount of the Net Employee Fund paid or to be paid to the State of California Controller's Office's Unclaimed Property Fund, if any.

J. The Settlement Administration Costs incurred by, or at the direction of, the Settlement Administrator in connection with the administration and implementation of this Agreement in an amount not exceeding Four Thousand Five Hundred Dollars (\$4,500.00),

absent prior approval by the Court, shall be paid out of the Gross Settlement Amount within fifteen (15) calendar days after Defendant funds the Gross Settlement Amount.

K. Upon completion of the implementation and administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to counsel for all Parties.

L. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Plaintiff's Counsel, or the Settlement Administrator based on the mailings, distribution, or Settlement Share payment made in accordance with this Agreement or any order of the Court.

VII. Release and Waivers.

A. Except with respect to the obligations arising out of the Settlement and in consideration of the payments and terms set forth above, Plaintiff and the Allegedly Aggrieved Employees expressly, to the fullest extent permitted by law, fully and forever compromise, release, resolve, relinquish, and discharge the Released Parties from the Released Claims (as defined herein). To the fullest extent permitted by law, Plaintiff will agree not to commence or participate in any claim, demand, grievance, action, or other proceeding against the Released Parties based upon the claims being released.

B. Except with respect to the obligations arising out of the Settlement, the Released Claims of Plaintiff and the Allegedly Aggrieved Employees against the Released Parties are fully and forever compromised, released, resolved, relinquished, and discharged through the PAGA Period. For the avoidance of doubt, as of the entry of the Approval Order, Plaintiff and the Allegedly Aggrieved Employees are bound by the settlement of the Released Claims.

C. Plaintiff's General Release. Upon approval by the Court of this Agreement, Plaintiff shall fully release and forever discharge the Released Parties for any and all causes of action, obligations, costs, expenses, damages, claims, liabilities, and benefits (including attorneys' fees and costs), of whatever character, in law or in equity, known or unknown, suspected or unsuspected, matured or otherwise, of any kind whatsoever, now existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date that Plaintiff signs this Agreement, including but not limited to any claims or causes of action which were, or could have been asserted in the Action and/or arising out of his employment with the Released Parties.

- a. Plaintiff specifically waives the benefit of the provisions of California Civil Code section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

- b. Notwithstanding the provisions of Section 1542, Plaintiff expressly acknowledges that this Agreement is also intended to include in its effect, without limitation, all claims which Plaintiff does not know or suspect to exist in his favor at the time of the execution hereof, and that this Agreement contemplates the extinguishment of any such claim.

VIII. Miscellaneous.

A. Confidentiality. The Parties, Plaintiff's Counsel, and Defendant's Counsel agree that the existence and contents of this Settlement and all related settlement communications will remain confidential until the Motion for Court Approval of Settlement is filed with the Court. This provision shall not prevent the disclosure of such information prior to the filing of the Motion for Court Approval of Settlement with the Court to (1) regulators, rating agencies, independent accountants, advisors, financial analysts, agents, existing or potential insurers or reinsurers, experts, courts, and any existing or potential investor of or any existing or potential lender to any of the Released Parties, the Settlement Administrator as may reasonably be required to effectuate this Settlement, and/or as otherwise required to comply with any applicable law or regulation; (2) any person or entity to whom the Parties agree in writing disclosure must be made to effectuate this Settlement, and/or (3) by Defendant or any of the Released Parties as necessary for any reasonable commercial purpose.

B. Plaintiff and Plaintiff's Counsel agree that the discussions and the information exchanged in the course of negotiating this Settlement and Agreement are confidential and were made available on the condition that they not be disclosed to third parties, that they not be the subject of public comment, and that they not be publicly disclosed or used by Plaintiff or Plaintiff's Counsel in any way in the Action should it not settle or in any other proceeding.

C. Prohibition on Press Releases. Plaintiff and Plaintiff's Counsel agree they will not contact the press, issue any press releases, give any interviews, or comment upon this Settlement to any person in any way other than as specifically provided in this Agreement. Plaintiff and Plaintiff's Counsel agree that, if approached by any person other than Allegedly Aggrieved Employees, they will say only that the Action settled. Upon entry of the Approval Order, Plaintiff's Counsel may identify the Settlement and/or the Approval Order and shall comply with all confidentiality provisions of this Agreement.

D. Confidential Materials. The Parties agree to cooperate and to work with one another to protect any confidential materials exchanged in connection with mediation or otherwise produced in the Action. This includes, but is not limited to, stipulating that any confidential information submitted to any court in the Action will be sealed.

E. Agreement to Cooperate. All of the Parties, their successors and assigns, and their attorneys agree to cooperate with one another in seeking Court Approval of this Settlement and to effectuate this Agreement.

F. Discovery. The Parties agree that all pending discovery requests are withdrawn.

G. Choice of Law/Venue. In determining the rights of the Parties hereto, this Agreement shall be governed by, construed, and interpreted in accordance with the internal laws of the State of California, without regard to the conflict of laws principles thereof. In addition, any action brought to enforce the provisions of this Agreement shall be commenced, prosecuted, and defended exclusively in the Superior Court of the State of California, County of San Diego.

H. Warranties. Each signatory to this Agreement hereby warrants that (s)he has the authority to execute this Agreement and thereby bind the respective Party. Plaintiff warrants and represents that he is standing in the shoes of the LWDA with respect to the Released Claims and has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity any Released Claims or any part or portion thereof.

I. Binding Effect of the Agreement. The terms of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, legal representatives, executors, administrators, successors, and assigns. The Parties intend this Agreement to be binding pursuant to Code of Civil Procedure § 664.6. Should either Party be required to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

J. Integration Clause. This Agreement and its attachments constitute the entire agreement of the Parties with respect to the matters discussed herein, and supersede all prior or contemporaneous oral or written understandings, negotiations, agreements, statements, or promises. In executing this Agreement, the Parties acknowledge that they have not relied upon any oral or written understandings, negotiations, agreements, statements, or promises that are not set forth in this Agreement or its incorporated **Exhibit A**.

K. Modifications in Writing Only. This Agreement may not be amended or modified in any respect except by a written instrument duly executed by all of the Parties to this Agreement or their counsel. Non-material amendments or modifications to this Agreement may be made in writing between Plaintiff's Counsel and Defendant's Counsel without the need to seek the Court's approval.

L. Withdrawal from Agreement. If the Court indicates, prior to the Approval Order, that the Settlement will not be approved unless certain changes are made, the Parties will attempt in good faith to reach an agreement as to any such changes prior to withdrawing from this Agreement. However, if no such agreement can be reached within thirty (30) calendar days after the Court indicates that the Settlement will not be approved unless certain changes are made, absent a written agreement among the Parties to continue discussions, then Plaintiff or Defendant may terminate and withdraw from this Agreement consistent with Paragraphs III(A)(e) and VIII(M) of this Agreement.

M. Extensions. Without further order of the Court, Plaintiff's Counsel and Defendant's Counsel may agree in writing to reasonable extensions of time to carry out any of the provisions of this Agreement or the Approval Order.

N. Headings. The headings and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision thereof.

O. Notice. All notices or other communications given pursuant to this Agreement will be in writing and addressed to:

Plaintiff's Counsel:

Larry W. Lee (lwlee@diversitylaw.com)
Max W. Gavron (mgavron@diversitylaw.com)
Kwanporn "Mai" Tulyathan (ktulyathan@diversitylaw.com)
Diversity Law Group
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555

William L. Marder (bill@polarislawgroup.com)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
Telephone: (831) 4214

Defendant's Counsel:

Jennifer N. Lutz (jlutz@pettitkohn.com)
Jessica C. O'Malley (jomalley@pettitkohn.com)
Annie F. Fraser (afraser@pettitkohn.com)
Pettit Kohn Ingrassia Lutz & Dolin PC
11622 El Camino Real, Suite 300
San Diego, CA 92130
Telephone: (858) 755-8500

P. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, and this Agreement is effective upon execution of at least one counterpart by each party to this Agreement.

Q. No Admissions. If this Agreement does not become effective or is cancelled or terminated for any reason, it shall be deemed negotiations for settlement purposes only and will not be admissible in evidence or usable for any purposes whatsoever in the Action or any proceedings between the Parties. Defendant denies all of the claims, contentions, and each and every allegation made by Plaintiff in the Action and expressly disclaims that any action, omission, or alleged wrongdoing by it, including entering into this Agreement or Defendant paying the amounts provided for herein, constitutes, acknowledges, or supports the existence or finding of a violation of the California Labor Code or gives rise to the imposition of any civil or statutory penalties under PAGA or otherwise. Nothing in this Agreement may constitute, may be

construed as, or may be used as an admission by Defendant of any fault, wrongdoing, or liability whatsoever.

R. No Tax Advice. Neither Plaintiff's Counsel nor Defendant's Counsel intend anything contained herein to constitute legal advice regarding the tax consequences of any amount paid hereunder, nor shall it be relied upon as such.

S. Terminology and Construction. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders and the singular shall include the plural and vice versa.

T. Conflicts. In the event of a conflict between this Agreement and any other document prepared pursuant to the Settlement, the terms of this Agreement supersede and control.

U. Disputes Regarding Language of Settlement Agreement. If the Parties have a dispute with regard to the language of the Agreement, the Parties agree to attempt to informally resolve the dispute by engaging Retired Justice Judith Haller to mediate such dispute.

V. Waiver. Any failure by any Party to insist upon the strict performance by any other Party of any provisions of this Agreement shall not be deemed a waiver of any provision of this Agreement and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

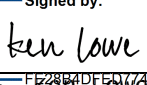
W. Agreement Drafted by All Parties. This Agreement has been, and shall be construed to have been, drafted by all the Parties to it, and the Parties agree that any rule which construes ambiguities against the drafter shall have no force or effect.

PLAINTIFF ZACHARY THOMPSON

D & K ENGINEERING

DocuSigned by:

 E9BE9145F3C6412...
 Zachary Thompson

Signed by:

 F28B4DE07742F...
 By: Ken Lowe
 Its: CFO

APPROVED AS TO FORM:

DIVERSITY LAW GROUP

PETTIT KOHN INGRASSIA LUTZ & DOLIN
 PC


 Larry W. Lee
 Max W. Gavron
 Kwanporn "Mai" Tulyathan
 Plaintiff's Counsel

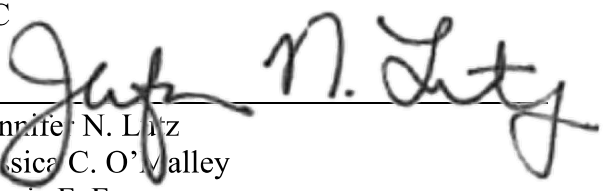

 Jennifer N. Lutz
 Jessica C. O'Malley
 Annie F. Fraser
 Defendant's Counsel

EXHIBIT A

**NOTICE OF LABOR CODE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
AND RELEASE OF CLAIMS**

I. Notice of Settlement.

On _____, the Superior Court for the County of San Diego approved a settlement of claims brought pursuant to the Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”), in the matter entitled *Zachary Thompson, as an individual and on behalf of all others similarly situated v. D & K Engineering, a California corporation; and Does 1 through 50, inclusive*, Superior Court of California, County of San Diego, case number 37-2022-00026832-CU-OE-CTL (the “Action”).

The Action was brought by Plaintiff Zachary Thompson (“Plaintiff”) on behalf of himself, allegedly aggrieved employees, and the State of California. Plaintiff alleged untimely payment of wages by Defendant D & K Engineering (“D&K”) occurred in violation of California Labor Code sections 204 and 2699, *et seq.* D&K expressly denies any liability and denies all claims, contentions, and each and every allegation made by Plaintiff. The Court has not made any determination as to whether the claims advanced by Plaintiff on behalf of himself and allegedly aggrieved employees, or the defenses raised by D&K, have any merit.

After arm’s length negotiations, Plaintiff and D&K (collectively as the “Parties”) agreed to resolve the Action with no decision or admission of who is right or wrong, pursuant to the terms and conditions set forth in a written Settlement Agreement (the “Settlement”). The total Settlement amount agreed to by the parties covers the attorneys’ fees and costs for Plaintiff’s counsel, settlement administration costs, a service payment to Plaintiff, a payment to the California Labor & Workforce Development Agency (“LWDA”), and the remaining funds to the Allegedly Aggrieved Employees. By agreeing to resolve the Action, the parties avoid the risks and costs of a trial.

The Settlement does not constitute an admission of the accuracy of any allegation made by Plaintiff or Plaintiff’s counsel or the strengths and weaknesses or D&K’s defenses. Furthermore, this Notice is not an expression of any opinion by the Court as to the merits of Plaintiff’s claims.

You are receiving this Notice because you are in the group of employees referred to as the “Allegedly Aggrieved Employees,” which is defined as all individuals employed by D&K in a non-exempt position in the State of California who received wages during the PAGA Period. The PAGA Period is the time period of May 6, 2021, through June 30, 2022. Allegedly Aggrieved Employees are entitled to share in the Settlement funds and will be bound by a release of claims.

II. Settlement Shares.

The Settlement Share to each Allegedly Aggrieved Employee was calculated on a pro rata basis based on the total amount of Settlement funds allocated to the Allegedly Aggrieved

Employees (“Net Employee Fund”) divided by the total number of pay periods worked by the Allegedly Aggrieved Employees during the PAGA Period.

Settlement checks to the Allegedly Aggrieved Employees will remain valid and negotiable for one hundred eighty (180) calendar days from the date of issuance. Funds from any checks not deposited or cashed within that time will be forwarded to the State of California Controller’s Office’s Unclaimed Property Fund in the name of the respective Allegedly Aggrieved Employees.

III. Release.

As of [REDACTED], the Allegedly Aggrieved Employees are bound by the settlement of the Released Claims as to the Released Parties.

The Released Parties are D & K Engineering, including its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.

The Released Claims are all claims, causes of action, demands, damages, or liabilities arising at any time during the PAGA Period that were pled or which could have reasonably been pled based on the factual allegations contained in the operative Complaint or any amendments thereto, including but not limited to claims brought under the Private Attorneys General Act (“PAGA”) for violation of Labor Code Section 204.

Except with respect to the obligations arising out of the Settlement, the Released Claims of Plaintiff and the Allegedly Aggrieved Employees against the Released Parties are fully and forever compromised, released, resolved, relinquished, and discharged through the PAGA Period, whether or not Allegedly Aggrieved Employees cash their checks within the 180-day window.

IV. Settlement Administrator.

If you have any questions about the Settlement, you may contact the Settlement Administrator, [REDACTED], at [REDACTED]. Or you may contact the attorneys for the Plaintiff at

Larry W. Lee (lwlee@diversitylaw.com)
Max W. Gavron (mgavron@diversitylaw.com)
Kwanporn “Mai” Tulyathan (ktulyathan@diversitylaw.com)
Diversity Law Group
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555

William L. Marder (bill@polarislawgroup.com)
Polaris Law Group
501 San Benito Street, Suite 200

Hollister, CA 95023
Telephone: (831) 4214

Pleadings and other records relevant to the claims can be found at the Superior Court for the County of San Diego, located at Hall of Justice, 330 West Broadway, San Diego, California 92101. They can also be accessed online through the Register of Actions located on Court's website at www.sdcourt.ca.gov/ and using the case number 37-2022-00026832-CU-OE-CTL.

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE.

EXHIBIT C

Thompson v. D & K Engineering
Max W. Gavron Time and Task Chart

Hours	Description of Work
6.9	Review client documents; research background of Defendant; research potential causes of action and viability of same
2.9	Review and revise complaint and PAGA letter
1.9	Analyze and review initial court notices and Defendant's answer to complaint.
4.5	Draft and revise initial set of written discovery; review file to prepare same.
15.7	Analyze and review Defendant's Motion to Compel Arbitration and supporting documents; conduct legal research re same; confer with co-counsel re same.
8.7	Draft and revise opposition to Motion to Compel Arbitration; conduct further legal research; confer with co-counsel.
2.5	Analyze and review Defendant's Reply in support of Motion to Compel Arbitration and supporting documents; conduct further legal research.
2.0	Prepare for hearing on motion to compel arbitration; confer with co-counsel re same; analyze and review court's tentative ruling.
4.7	Analyze and review Defendant's Notice of Appeal; conduct legal research re viability of appeal; confer with co-counsel and client re same.
3.5	Confer with defense counsel following referral to appellate mediation program; revise data requests for mediation; confer with co-counsel re same.
1.9	Analyze and review data/information produced by Defendant for purposes of evaluating settlement; confer with co-counsel re settlement value and demand.
1.7	Multiple conversations with Defense counsel re possible settlement; meeting with associate justice assigned to mediate case re anticipated issues at mediation.
2.6	Review and revise MOU; confer with counsel re same
6.4	Review and revise long form settlement documents; confer with defense counsel and co-counsel re same.
7.2	Review and revise Motion for Approval and supporting documents
73.1	TOTAL HOURS

EXHIBIT D

12/18/2024
10:17 AM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip Classification Open
Client (hand select) Include: Thompson, Zachary v. D & K
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
71645	EXP	Mariana Becerra	1	75.00	75.00
5/6/2022		Court fees			
WIP		Thompson, Zachary v. D & K			
LWDA					
72078	EXP	Olympia	1	0.25	0.25
5/31/2022		Photocopies			
WIP		Thompson, Zachary v. D & K			
Photocopies					
72079	EXP	Olympia	1	6.13	6.13
5/31/2022		Postage			
WIP		Thompson, Zachary v. D & K			
Postage					
72360	EXP	Erika Mejia	1	1490.20	1490.20
7/11/2022		Court fees			
WIP		Thompson, Zachary v. D & K			
OneLegal - Complaint					
72663	EXP	Erika Mejia	1	79.85	79.85
7/18/2022		Atty Service			
WIP		Thompson, Zachary v. D & K			
Attorney Service - Complaint Service					
72566	EXP	Erika Mejia	1	12.87	12.87
7/22/2022		Court fees			
WIP		Thompson, Zachary v. D & K			
OneLegal - POS of Summons					
74075	EXP	Olympia	1	20.08	20.08
1/12/2023		Court fees			
WIP		Thompson, Zachary v. D & K			
OneLegal - CMS					
74173	EXP	Erika Mejia	1	20.08	20.08
1/17/2023		Court fees			
WIP		Thompson, Zachary v. D & K			
OneLegal - Oppo to MTC Arb					

12/18/2024
10:17 AM

DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
74265	EXP	Valeria Tril	1	20.54	20.54
1/25/2023		Court fees			
WIP		Thompson, Zachary v. D & K			
OneLegal - Notice of Remote Appearance					
74559	EXP	Olympia	1	4.00	4.00
3/6/2023		Online researc			
WIP		Thompson, Zachary v. D & K			
Online Order					
76067	EXP	Linda Lee	1	10.50	10.50
9/7/2023		Court fees			
WIP		Thompson, Zachary v. D & K			
TrueFiling - Stip for Extension of Time to file					
Brief					
76332	EXP	Linda Lee	1	10.50	10.50
10/10/2023		Court fees			
WIP		Thompson, Zachary v. D & K			
TrueFiling - Stip for Extension of Time					
76616	EXP	Linda Lee	1	10.50	10.50
11/13/2023		Court fees			
WIP		Thompson, Zachary v. D & K			
TrueFiling - Stip for Extension of Time					
80069	EXP	Max Gavron	1	250.00	250.00
12/18/2024		Court fees			
WIP		Thompson, Zachary v. D & K			
MFA Filing					
Grand Total					
Billable			0.00		2010.50
Unbillable			0.00		0.00
Total			0.00		2010.50

EXHIBIT E